

KEYWORD: Guideline B

DIGEST: In evaluating an applicant’s case, a Judge must consider the evidence as a totality. Applicant is married to a Ukranian citizen. His wife is an employee of a company that is seeking a facility clearance. He has ties of affection to his in-laws in Ukraine. Ukraine is a country destabilized by Russian intervention. Tthe Judge’s conclusion that Applicant’s circumstances raise concerns under Guideline B is sustainable. Adverse decision affirmed.

CASENO: 14-06653.a1

DATE: 11/18/2016

DATE: November 18, 2016

In Re:	)	
	)	
-----	)	ISCR Case No. 14-06653
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 9, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 9, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Ukraine is a republic in which there has been unrest, some of it consisting of protests over the government’s decision to seek closer ties to Russia. Russian military forces have intervened in Crimea, leading to Russian occupation. Pro-Russian protesters in eastern and southern Ukraine favor greater ties to Russia. There have been violent clashes between Russian-backed separatists and Ukrainian forces in eastern regions of the country. The Russian occupation of Crimea has displaced over 18,000 people and has caused human rights abuses. The Russian military provides weapons and support to the separatists and are present on the eastern and southern borders of Ukraine. The U.S. State Department warned U.S. citizens to defer travel to the eastern regions of that country.

Applicant’s wife was born in Russia, but her family moved to Ukraine when she was a child. She came to the U.S. on a student visa. Applicant met her in the late 2000s. He started his own business and is seeking a facility clearance for it. Applicant’s wife began working for his company. The Judge found that Applicant’s “foreign national, non-cleared wife works in a facility that administers government contracts and is seeking a facility clearance[.]” Decision at 3. Applicant provided no evidence to mitigate the concern that arises from this circumstance. Applicant’s wife applied for U.S. citizenship in the late 2000s.

Applicant’s parents, sibling, sibling-in-law, and aunt are residents and citizens of Ukraine. They live in an area of the country where separatists have seized control. The State Department has recommended that U.S. citizens present there depart. Applicant’s parents-in-law are retired. His wife maintains weekly contact with them by means of electronic communication. Applicant has a good relationship with his in-laws.

### **The Judge’s Analysis**

The Judge found that Applicant’s family connections to a country with an unstable government that is under threat from Russian-backed separatists establishes a heightened risk of

foreign exploitation. Though Applicant has substantial ties within the U.S., she concluded that he is bound by affection to his wife, a non-citizen employee of his company, and to her family. She concluded that Applicant's evidence was not enough to mitigate the concerns arising from these circumstances.

## **Discussion**

Applicant challenges some of the Judge's findings of fact. He argues that his wife is seeking permanent resident status at this point, not citizenship. He also argues that there is no evidence that his in-laws reside in eastern Ukraine. In the course of presenting his arguments, Applicant cites to matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

We agree with Applicant concerning his wife's status. His testimony is that she is seeking to become a permanent resident. Tr. at 30-31. On the other point, however, we find no error. In his clearance interview, Applicant advised that his parents-in-law reside in a part of Ukraine that is explicitly covered by the State Department warning referenced above. Government Exhibit 2, Clearance Interview, at 4. Applicant asks for an opportunity to supplement the record. We have no authority to remand a case simply to take in additional evidence. *See, e.g.*, ISCR Case No. 12-10934 at 2 (App. Bd. Mar. 31, 2016). In any event, even if this finding were erroneous, its correction would not likely result in a different decision. The Judge's analysis focused principally on (1) Applicant's living and working with his non-citizen wife and (2) his family connections in a country experiencing political instability. Applicant has cited to no harmful error that would likely change the outcome of the case. The Judge's material findings are supported by substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant contends that his Ukrainian relatives do not pose a heightened risk of foreign exploitation. We construe this as an argument that his circumstances do not raise security concerns. The Directive presumes a nexus between admitted or proven facts under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). In evaluating an applicant's case, a Judge must consider the evidence as a totality. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016). In the case before us, we note evidence that Applicant is married to a Ukrainian citizen, that his wife is an employee of a company that is seeking a facility clearance, that he has ties of affection to his in-laws in Ukraine, and that Ukraine is a country destabilized by Russian intervention. Under the facts of this case, the Judge's conclusion that Applicant's circumstances raise concerns under Guideline B is not arbitrary, capricious, or contrary to law.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board